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*ADMITTED IN DC ONLY

March 25, 2015

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 12-375 - Global Tel*Link Corporation - Notice of Ex Parte Presentation

Dear Secretary Dortch:

On March 23, 2015, David Silverman, Senior Vice President and General Counsel for Global Tel*Link Corporation ("GTL") and the undersigned had five separate meetings with: 1) Daniel Alvarez, Legal Advisor to Chairman Wheeler and Rebekah Goodheart, Legal Advisor to Commissioner Clyburn; 2) Amy Bender, Legal Advisor to Commissioner O'Rielly; 3) Travis Litman, Legal Advisor to Commissioner Rosenworcel; 4) Nicholas Degani, Legal Advisor to Commissioner Pai; and 5) staff of the Wireline Competition Bureau, Pricing Policy Division: Pamela Arluk, Acting Division Chief, Lynne Engledow and David Zesiger, Acting Deputy Division Chiefs, Rhonda Lien and Gregory Haledjian, to discuss matters relating to inmate calling services ("ICS") addressed by the Federal Communications Commission's ("FCC's") *ICS Order and First FNPRM* and *Second FNPRM*.¹

¹ *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) ("*ICS Order and First FNPRM*"), *pets. for stay granted in part sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. Jan.13, 2014), *pets. for review*

The meetings covered the following issues:

- the comments and reply comments submitted by GTL in the above-captioned docket on January 12 and 27, 2015;
- the FCC's articulated position on correctional facilities' site commission practices (*see* Attachment A), and the need for continued recovery of correctional facilities' legitimate ICS-related costs through an admin-support payment collected and remitted based on a per-minute of use rate that is separate but part of the backstop ICS rate caps;
- the marketplace continues to entertain high site commissions on new contracts, but noting that a few Departments of Corrections have eliminated site commissions and produced competitive bidding that resulted in interstate and intrastate ICS rates that are well below the current FCC interstate ICS rate caps;
- marketplace practices by Praeses that are skewing the competitive bidding process in favor of ICS providers willing to pay site commissions on interstate ICS call revenue;
- the goal of achieving market-based ICS rates cannot occur without simultaneous FCC action that establishes backstop rate caps for all ICS rates, transitions site commissions to admin-support payments, and accepts industry defined backstop rate caps for ancillary charges that are not subject to FCC jurisdiction;
- the inclusion of a clear unequivocal statement consistent with the *ICS Order and First FNPRM* and prior rulings that the FCC did not determine that past interstate ICS rates were unjust and unreasonable but rather that, going forward, it would "create a *new framework* to ensure that interstate ICS rates are just and reasonable;"² and
- a demonstration of the new technologies being produced by GTL that will bring advanced services to the inmate community and expand their access to digital information and provide alternatives to traditional payphone services.

pending sub nom. Securus Tech., Inc. v. FCC, No. 13-1280 (D.C. Cir. filed Nov. 14, 2013) (and consolidated cases); *Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 13170 (2014) ("*Second FNPRM*").

² *ICS Order and First FNPRM* ¶ 47 (emphasis added). The United States Supreme Court has concluded that "administrative rules will not be construed to have retroactive effect unless their language requires this result." *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1998); *see also Simmons v. Lockhart*, 931 F.2d 1226, 1230 (8th Cir. 1991) ("we will not retroactively apply statutes or regulations without a clear indication that the legislature or administrative agency intends to diverge from the norm of acting prospectively."). "[T]he principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994) (internal quotation marks omitted).

Marlene H. Dortch
Secretary
March 25, 2015

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this notice is being filed in the appropriate docket.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

/s/ Chérie R. Kiser

Chérie R. Kiser

Counsel for Global Tel*Link Corporation

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**Federal Communications Commission
Statements Regarding ICS Site Commissions**

2012 Notice of Proposed Rulemaking¹

- “Unlike non-incarcerated customers who have access to alternative calling platforms on public payphones, inmates only have access to payphones operated by a single provider for all available services at that payphone. These contracts additionally often include a site commission or location fee paid to the correctional facility. The Commission has previously found that ‘[t]o have a realistic chance of winning a contract, the bidder must include an amount to cover commissions paid to the inmate facility.’ Five years ago Petitioners estimated that ‘commissions add an average of 43 percent . . . to all other costs before commissions.’” (2012 ICS NPRM ¶ 5)
- “The record to date indicates a wide disparity in ICS rates between states. These rates reflect the higher security and network costs that are inherent in ICS; the disparity thus may reflect whether the rates in question include site commissions. For instance, correctional facilities located in states that do not require commissions from ICS providers often charge lower ICS rates. For example, New York state prohibited site commissions in state prisons and interstate per-minute rates in such prisons are as low as \$0.048. In contrast, in Colorado, a state that has site commissions, interstate per-minute rates can be as high as \$0.89. However, in Montana, another state with site commissions, the interstate per-minute rate is \$0.12. Such record evidence raises questions about whether ICS rates accurately reflect the costs of providing ICS and whether site commission payments are a reasonable cost of providing ICS that therefore should be recovered in the ICS rates inmates are charged.” (2012 ICS NPRM ¶ 7)
- “The FCC has previously found that ‘under most contracts, the commission is the single largest component affecting the rates for inmate calling service’ and ‘because the bidder who charges the highest rates can afford to offer the confinement facilities the largest location commissions, the competitive bidding process may result in higher rates.’” (2012 ICS NPRM ¶ 37)

2013 Report and Order and Further Notice of Proposed Rulemaking²

- “A significant factor driving these excessive rates is the widespread use of site commission payments – fees paid by ICS providers to correctional facilities or departments of corrections in order to win the exclusive right to provide inmate phone

¹ Rates for Interstate Inmate Calling Services, 27 FCC Rcd 16629 (2012) (internal citations omitted from all quotations) (“2012 ICS NPRM”).

² Rates for Interstate Inmate Calling Services, 28 FCC Rcd 14107 (2013) (internal citations omitted from all quotations) (“ICS Order and First FNPRM”).

service. These site commission payments, which are often taken directly from provider revenues, have caused inmates and their friends and families to subsidize everything from inmate welfare to salaries and benefits, states' general revenue funds, and personnel training." (*ICS Order and First FNPRM* ¶ 3)

- "In addition to immediate rate reform, we find that site commission payments and other provider expenditures that are not reasonably related to the provision of ICS are not recoverable through ICS rates, and therefore may not be passed on to inmates and their friends and families." (*ICS Order and First FNPRM* ¶ 7)
- "Finally, providers point to 'site commissions' as a significant driver of increases to rates charged to inmates. Site commissions are payments made from ICS providers to correctional facilities and related state authorities. Since the First Wright Petition was filed in 2003, the record indicates that there has been a significant increase in site commission payments made in connection with the provision of ICS. Such payments can take the form of a percentage of gross revenue, a signing bonus, a monthly fixed amount, yearly fixed amount, or in-kind contributions. Site commission payments are currently prohibited in seven states, as well as at some federal detention facilities including dedicated facilities operated by ICE." (*ICS Order and First FNPRM* ¶ 33)
- "The record makes clear that where site commission payments exist, they are a significant factor contributing to high rates. Site commission payments are often based on a percentage of revenues ICS providers earn through the provision of ICS, and such percentages can range from 20 to 88 percent. While the record indicates that site commission payments sometimes fund inmate health and welfare programs such as rehabilitation and educational programs; programs to assist inmates once they are released; law libraries; recreation supplies; alcohol and drug treatment programs; transportation vouchers for inmates being released from custody; or other activities, in accordance with the decisions of prison administrators and other local policymakers, such payments are also used for non-inmate needs, including employee salaries and benefits, equipment, building renewal funds, states' general revenue funds, and personnel training. Thus, it is clear that the level of such payments varies dramatically and their use and purposes differ significantly, from funding roads to purposes that ultimately benefit inmate welfare." (*ICS Order and First FNPRM* ¶ 34)
- "Site commission payments appear to be a particularly significant contributor to high rates. Several states have eliminated or reduced such payments, and available data indicate that ICS rates in those states are substantially lower than those in states that require commission payments. For example, in New Mexico, after site commissions were prohibited, ICS rates fell from \$10.50 for a 15-minute interstate collect call to \$0.65 for the same 15-minute call based on revised ICS rates—a 94 percent reduction. Similarly, New York ended site commission payments in 2008, 'taking the position that the state prison system shall not accept or receive revenue in excess of its reasonable operating cost for establishing and administering its ICS, while ensuring that the system provides

reasonable security measures to preserve the safety and security of prisoners, correctional staff, and call recipients.” (*ICS Order and First FNPRM* ¶ 38)

- “Thus, the Commission has previously found that competition during the competitive bidding process for ICS ‘does not exert downward pressure on rates for consumers,’ and that ‘under most contracts the commission is the single largest component affecting the rates for inmate calling service.’ We reaffirm those findings here. Indeed, as the Commission has found, competition for ICS contracts may actually tend to increase the rate levels in ICS contract bids where site commission size is a factor in evaluating bids.” (*ICS Order and First FNPRM* ¶ 41)
- “Site commission payments are not costs that are reasonably and directly related to the provision of ICS because they are payments made to correctional facilities or departments of corrections for a wide range of purposes, most or all of which have no reasonable and direct relation to the provision of ICS. After carefully considering the record, we reaffirm the Commission’s previous holding and conclude that site commission payments are not part of the cost of providing ICS and therefore not compensable in interstate ICS rates.” (*ICS Order and First FNPRM* ¶ 54)
- “We also disagree with ICS providers’ assertion that the Commission must defer to states on any decisions about site commission payments, their amount, and how such revenues are spent. We do not conclude that ICS providers and correctional facilities cannot have arrangements that include site commissions. We conclude only that, under the Act, such commission payments are not costs that can be recovered through interstate ICS rates. Our statutory obligations relate to the rates charged to end users—the inmates and the parties whom they call. We say nothing in this Order about how correctional facilities spend their funds or from where they derive. We state only that site commission payments as a category are not a compensable component of interstate ICS rates. We note that we would similarly treat ‘in-kind’ payment requirements that replace site commission payments in ICS contracts.” (*ICS Order and First FNPRM* ¶ 56)
- “The record reflects that site commission payments may be used for worthwhile causes that benefit inmates by fostering such objectives as education and reintegration into society. Law enforcement and correctional facilities assert that some or all of these programs would cease or be reduced if commission payments were not received as no other funding source would be available.” (*ICS Order and First FNPRM* ¶ 57)
- “We find that this subset of rates, derived from states that have eliminated site commissions and maintained adequate security, is the most relevant to our approach to determining the costs that should still be recoverable through interstate ICS rates. The subset provides a reasonable basis for establishing a conservative proxy for cost-based rates.” (*ICS Order and First FNPRM* ¶ 62)

- “Our use of these states’ data does not indicate that we conclude these interstate rates are necessarily at cost. Instead, we select them because they exclude site commissions, which we find is the most important factor leading to interstate ICS rates being above cost. There may well be other factors driving these rates above what we would consider to be reasonable cost but we nevertheless include these states to make a conservative safe harbor rate level calculation.” (*ICS Order and First FNPRM* at n.229)
- “Because we conclude site commissions are not part of the cost of ICS, we do not include the site commission profits in setting either the debit, prepaid or collect rate caps.” (*ICS Order and First FNPRM* at n.273)
- “We commend states that have undertaken ICS reform. In particular, we encourage more states to eliminate site commissions, adopt rate caps, disallow or reduce per-call charges, or take other steps to reform ICS rates.” (*ICS Order and First FNPRM* ¶ 130)
- “For the same reasons we found that site commission payments are not part of the cost of providing interstate ICS, we tentatively conclude that site commissions should not be recoverable through intrastate rates, and seek comment on this tentative conclusion. Where states have prohibited site commission payments, we seek comment on whether the resulting intrastate ICS rates are just and reasonable and whether an average of such rates would provide a reasonable safe harbor for fair intrastate ICS rates.” (*ICS Order and First FNPRM* ¶ 133)

2014 Second Further Notice of Proposed Rulemaking³

- “Excessive rates are primarily caused by the widespread use of site commission payments – fees paid by ICS providers to correctional facilities or departments of corrections to win the exclusive right to provide inmate calling service at a facility. These site commission payments, which have recently been as high as 96% of gross revenues, inflate rates and fees, as ICS providers must increase rates in order to pay the site commissions. This forces inmates and their friends and families, who use ICS and are forced to absorb the site commissions in the rates they pay, to subsidize everything from inmate welfare programs, to salaries and benefits of correctional facilities, states’ general revenue funds, and personnel training.” (*Second ICS FNPRM* ¶ 3)
- “Interstate reform in some cases has been met by increased intrastate ICS rates and has not discouraged other practices that also increase the costs of ICS to consumers, such as excessive ancillary charges and an increase in the use of single call services. The pressure to pay site commissions that exceed the direct and reasonable costs incurred by the correctional facility in connection with the provision of ICS continues to disrupt and even invert the competitive dynamics of the industry. These and other market failures

³ *Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 13170 (2014) (internal citations omitted from all quotations) (“*Second ICS FNPRM*”).

demonstrate that the interstate-only reforms adopted in the *Order*, while an important first step, did not completely address the problems in the ICS marketplace.” (*Second ICS FNPRM* ¶ 20)

- “The record is clear that site commissions are the primary reason ICS rates are unjust and unreasonable and ICS compensation is unfair, and that such payments have continued to increase since our *Order*. Moreover, where states have eliminated site commissions, rates have fallen dramatically. We therefore predict that prohibiting such payments will enable the market to perform properly and encourage selection of ICS providers based on price, technology and services rather than on the highest site commission payment.” (*Second ICS FNPRM* ¶ 21)
- “The payment of site commissions distorts the ICS marketplace by creating ‘reverse competition’ in which the financial interests of the entity making the buying decision (the correctional institution) are aligned with the seller (the ICS provider) and not the consumer (the incarcerated person or a member of his or her family).” (*Second ICS FNPRM* ¶ 22)
- “Aggregated data from the Mandatory Data Collection from 14 ICS providers show that over \$460 million in site commission payments were paid to facilities in 2013. This means that ICS users and their families, friends and lawyers spent over \$460 million to pay for programs ranging from inmate welfare to roads to correctional facilities’ staff salaries to the state or county’s general budget. These are pass-through payments from the provider to the facility, absent which, rates would be lower. Moreover, the magnitude of payments is significantly higher than previous estimates in the record.” (*Second ICS FNPRM* ¶ 23)
- “Despite their limited overall budget impact, site commission payments are the chief criterion many correctional institutions use to select the ICS provider for their facilities and are thus the main cause of the dysfunction of the ICS marketplace. The demand for site commission payments generates pressure on ICS providers to raise rates and assess additional ancillary charges, which are typically not subject to site commissions. The existing contract proposal process (RFP, or request for proposal) often focuses the competition between bidding ICS providers on who can pay higher site commissions to correctional institutions instead of creating incentives for ICS providers to provide the lowest rates to consumers.” (*Second ICS FNPRM* ¶ 24)
- “Eliminating the competition-distorting role site commissions play in the marketplace should enable correctional institutions to prioritize lower rates and higher service quality as decisional criteria in their RFPs, thereby giving ICS providers an incentive to offer the lowest end-user rates.” (*Second ICS FNPRM* ¶ 27)
- “The record also indicates that when a state acts to prohibit or reduce monetary site commission payments, the ICS contract may instead require other valuable inducements

such as wireless telephone blocking systems. The Commission defined site commissions broadly to include ‘payments in money or services from ICS providers to correctional facilities or associated government agencies, regardless of the terminology the parties to the agreement use to describe them.’” (*Second ICS FNPRM* at n.96)

- “Alabama has recently proposed comprehensive regulation of intrastate ICS. However, the vast majority of states have not taken up our repeated calls for ICS reform. In addition, states have inconsistently addressed site commission payments. For example, while the *Order* noted seven states that had eliminated site commissions for intrastate ICS, by implication the vast majority have not. We again encourage states to act on ICS in their jurisdictions and note that state action that is consistent with the regulations that the Commission ultimately adopts would not be subject to preemption.” (*Second ICS FNPRM* ¶ 117)